

1 Donald E. J. Kilmer, Jr. [SBN: 179986]  
 2 LAW OFFICES OF DONALD KILMER  
 3 1645 Willow Street, Suite 150  
 San Jose, California 95125  
 4 Voice: (408) 264-8489  
 Fax: (408) 264-8487  
 E-Mail: [Don@DKLawOffice.com](mailto:Don@DKLawOffice.com)

5 Attorneys for Plaintiffs

ORIGINAL  
 FILED  
 2010 MAR 25 P 2:10  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

SI

8 UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO / OAKLAND DIVISION

10 MARK AARON HAYNIE, THE  
 11 CALGUNS FOUNDATION, INC.,  
 12 and THE SECOND AMENDMENT  
 FOUNDATION, INC.,

13 Plaintiffs,

14 vs.

15 CITY OF PLEASANTON, CITY OF  
 PLEASANTON POLICE  
 16 DEPARTMENT, CALIFORNIA  
 17 DEPARTMENT OF JUSTICE, and  
 18 DOES 1 TO 20,

19 Defendants.

Case No.: CV 10 1255

COMPLAINT

42 U.S.C. §§ 1983, 1988,  
 CALIFORNIA CIVIL CODE §§ 52 &  
 52.1

JURY TRIAL DEMANDED

21 INTRODUCTION

22 1. This is an action for compensatory damages and recovery of funds used to  
 23 make bail in a state criminal case in which the Plaintiff MARK AARON  
 24 HAYNIE was found to be factually innocent.

25 2. This action also seeks prospective injunctive relief against the Defendant  
 26 CALIFORNIA DEPARTMENT OF JUSTICE to compel that state agency to  
 27 comply with its statutory duties under California Penal Code §§ 12276.5 and  
 28 12289 in order to prevent future violations of Constitutional Rights.

## PARTIES

2 3. Plaintiff MARK AARON HAYNIE is a natural person and citizen of the  
3 United States and of the State of California and was at all material times a  
4 resident of Alameda County.

5 4. Plaintiff CALGUNS FOUNDATION, INC., (CGF) is a non-profit organization  
6 incorporated under the laws of California with its principal place of business  
7 in Redwood City, California. The purposes of CGF include supporting the  
8 California firearms community by promoting education for all stakeholders  
9 about California and federal firearms laws, rights and privileges, and  
10 defending and protecting the civil rights of California gun owners. CGF  
11 represents its members and supporters, which include California gun owners.  
12 CGF brings this action on behalf of itself and its supporters, who possess all  
13 the indicia of membership.

14 5. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-  
15 profit membership organization incorporated under the laws of Washington  
16 with its principal place of business in Bellvue, Washtington. SAF has over  
17 650,000 members and supporters nationwide, including California. The  
18 purposes of SAF include education, research, publishing and legal action  
19 focusing on the Constitutional right to privately owned and possess firearms,  
20 and the consequences of gun control. SAF brings this action on behalf of  
21 itself and its members.

22 6. Defendant CITY OF PLEASANTON is a municipal corporation organized  
23 under the laws of the State of California. This municipality is located in the  
24 County of Alameda.

25 7. Defendant CITY OF PLEASANTON POLICE DEPARTMENT is a police  
26 department within the City of Pleasanton, California.

27 8. Defendant CALIFORNIA DEPARTMENT OF JUSTICE is an agency of the  
28 State of California, headed by the Attorney General of the State, with a

1 statutory duty to administer and interpret the law and promulgate  
 2 regulations regarding weapons identified by the California Legislature as  
 3 "Assault Weapons." This agency has the power to issue memorandums,  
 4 bulletins and opinion letters to law enforcement agencies throughout the  
 5 State regarding reasonable interpretations of what constitutes an "Assault  
 6 Weapon" under California Law.

7 9. At this time, Plaintiffs are ignorant of the names of the individual police  
 8 officers who arrested Plaintiff HAYNIE as no discovery was exchanged in the  
 9 criminal action before the case was dropped from the docket. Plaintiffs  
 10 therefore name these individual officers as DOE Defendants and reserves the  
 11 right to amend this complaint when their true names are ascertained.  
 12 Furthermore, if/when additional persons and entities are discovered to have  
 13 assisted and/or lent support to the wrongful conduct of the Defendants named  
 14 herein, Plaintiff reserves the right to amend this complaint to add those  
 15 persons and/or entities as Defendants.

16

#### 17 JURISDICTION AND VENUE

18 10. This Court has subject matter jurisdiction over this action pursuant to 28  
 19 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1988.  
 20 11. This Court has supplemental jurisdiction over state law causes of action  
 21 arising from the same operative facts under 28 U.S.C. § 1337.  
 22 12. Venue for this action is proper under 28 U.S.C. §§ 1331 and/or the Civil Local  
 23 Rules for bringing an action in this district.

24

#### 25 CONDITIONS PRECEDENT

26 13. All conditions precedent have been performed, and/or have occurred, and/or  
 27 have been excused, and/or would be futile.

## FACTS

2 14. On or about February 7, 2009 officers (currently named as DOE Defendants)  
3 of the PLEASANTON POLICE DEPARTMENT arrested and detained MARK  
4 HAYNIE thus depriving him of his liberty. The agency case numbers for the  
5 incident are: CEN: 09-6635 and PFN: BHD164. The docket number for the  
6 Alameda Superior Court Case was: 09318856.

7 15. MARK HAYNIE was cited for possession of an Assault Weapon under  
8 California Penal Code § 12280 et seq. Bail was set at \$60,000.00. This  
9 caused MARK HAYNIE to have to pay a \$6,000 fee to a bail bondsman.

10 16. MARK HAYNIE's rifle was not an Assault Weapon because it was not listed  
11 in California Penal Code § 12276; nor could it be identified under Penal Code  
12 § 12276.1 because it lacked a detachable magazine.

13 17. MARK HAYNIE made all required court appearances. The Alameda County  
14 District Attorney's office declined to file an information against MARK  
15 HAYNIE and the matter was formally dropped from the Alameda County  
16 Superior Court Criminal Docket on March 27, 2009.

17 18. MARK HAYNIE was deprived of his liberty until March 27, 2009 when bail  
18 was exonerated in Department 701 by Superior Court Judge Walker.

19 19. MARK HAYNIE lost time off from work to make court appearances and  
20 incurred other losses associated with said criminal charges.

21 20. MARK HAYNIE was deprived of the possession and use of valuable personal  
22 property (a rifle) from the date of arrest until mid-June of 2009.

23 21. On or about October 21, 2009, MARK HAYNIE obtained a finding of factual  
24 innocence under California Penal Code 851.8 from the PLEASANTON  
25 POLICE DEPARTMENT.

26 22. CALGUNS FOUNDATION, INC., paid for Plaintiff MARK HAYNIE'S  
27 representation in the criminal matter in the amount of: \$3,713.43.

28 23. The deliberate indifference of all Defendants of the civil rights of MARK

1 HAYNIE resulted in the possible negligent training of the police officers  
 2 employed by the PLEASANTON POLICE DEPARTMENT, which in turn  
 3 caused MARK HAYNIE'S injuries.

4 24. The CALIFORNIA DEPARTMENT OF JUSTICE is the State agency  
 5 responsible for the training and education of law enforcement agencies with  
 6 respect to Assault Weapons under Penal Code §§ 12276.5 and 12289.

7 25. The failure by the CALIFORNIA DEPARTMENT OF JUSTICE to properly  
 8 identify illegal (and legal) weapons and distribute educational materials to  
 9 law enforcement agencies within this state is the result of deliberate  
 10 indifference to the civil rights of gun owners and/or a breach of a known duty  
 11 that is likely to result in arrest and wrongful prosecution of innocent people.  
 12 Furthermore this failure to identify illegal (and legal) weapons amounts to a  
 13 pattern, practice and custom of chilling the exercise of gun owners' rights  
 14 associated with the Second Amendment.

15 26. Plaintiffs allege on information and belief that the CALIFORNIA  
 16 DEPARTMENT OF JUSTICE had identified various weapons (including  
 17 HAYNIE'S weapon) as legal to own in California, but in fact undermined the  
 18 lawful administration of justice by encouraging California's 58 District  
 19 Attorneys to interpret the law in an *ad hoc* way for each case filed or brought  
 20 to their attention. This conduct resulted in the arrests and dismissals of  
 21 several cases throughout California. This policy and practice has resulted in  
 22 several miscarriages of justice throughout the State.

23 27. Furthermore, Plaintiffs allege on information and belief that the  
 24 CALIFORNIA DEPARTMENT OF JUSTICE has engaged in prior acts of  
 25 retaliatory prosecution against gun owners/dealers after they have asserted  
 26 various statutory and constitutional rights, thus causing Plaintiff HAYNIE to  
 27 seek a finding of factual innocence as a prerequisite to filing this action to  
 28 avoid retaliation.

1 28. The wrongful conduct of the Defendants, and each of them, resulted in the  
 2 following injuries to Plaintiffs:

3 a. An unreasonable seizure of Plaintiff MARK HAYNIE and deprivation  
 4 of his liberty when he was arrested, detained, booked, and required to  
 5 make bail and various court appearances on charges for which he was  
 6 factually innocent.

7 b. A violation of MARK HAYNIE's Second Amendment right to keep and  
 8 bear arms that are in common use for lawful purposes.

9 c. Interference with MARK HAYNIE's exercise of Civil Rights secured by  
 10 United States Constitution.

11 d. Monetary damages to MARK HAYNIE of \$6,000 for a bail bond and  
 12 additional amounts for lost wages and other costs.

13 e. Monetary damages to CALGUNS FOUNDATION, INC., in the amount  
 14 of \$3,713,43.

15 29. The continued wrongful conduct of the Defendant CALIFORNIA  
 16 DEPARTMENT OF JUSTICE will result in additional wrongful arrests and  
 17 prosecutions of innocent gun owners who are members of the CALGUNS  
 18 FOUNDATIONS, INC., and the SECOND AMENDMENT FOUNDATION,  
 19 INC. These arrests will result in the unconstitutional, unreasonable seizure  
 20 of innocent gun owners exercising their Second Amendment rights. There is  
 21 no adequate remedy at law except an order from this Court that the  
 22 CALIFORNIA DEPARTMENT OF JUSTICE issue a letter and/or  
 23 memorandum to all law enforcement agencies and District Attorneys' offices  
 24 of this State which is similar to, or conveys the same information as the  
 25 flowchart recommended by the CALGUNS FOUNDATION INC., to its  
 26 members and the public at large. The flowchart is located at the following  
 27 URL: <http://www.calguns.net/caawid/flowchart.pdf> .

28

**FIRST CLAIM FOR RELIEF: 42 USC § 1983**  
**PLAINTIFF HAYNIE AGAINST DEFENDANTS: CITY OF PLEASANTON,**  
**THE PLEASANTON POLICE DEPARTMENT AND DOE DEFENDANTS**  
**FOURTH AMENDMENT, UNITED STATES CONSTITUTION**

30. Paragraphs 1 through 29 are incorporated by reference as though fully set forth.
31. Plaintiff MARK AARON HAYNIE claims damages for injuries set forth above under 42 U.S.C. § 1983 against Defendants CITY OF PLEASANTON, the PLEASANTON POLICE DEPARTMENT and the DOE Defendants for a violation, under color of law, of his constitutional right to be free from unreasonable seizure under the Fourth Amendment to the United States Constitution as that right is applied to the States through the Fourteenth Amendment.

SECOND CLAIM FOR RELIEF: 42 USC § 1983  
PLAINTIFF HAYNIE AGAINST DEFENDANTS: CITY OF PLEASANTON,  
THE PLEASANTON POLICE DEPARTMENT AND DOE DEFENDANTS  
SECOND AMENDMENT, UNITED STATES CONSTITUTION

32. Paragraphs 1 through 29 are incorporated by reference as though fully set forth.
33. Plaintiff MARK AARON HAYNIE claims damages for injuries set forth above under 42 U.S.C. § 1983 against Defendants CITY OF PLEASANTON, PLEASANTON POLICE DEPARTMENT and the DOE Defendants for a violation, under color of law, of his constitutional right to keep and bear arms<sup>1</sup> that are in common use for lawful purposes, a right protected by the Second Amendment as that right is applied through the 14th Amendment.

25       <sup>1</sup> Plaintiff acknowledges that this claim is presently barred in this Circuit because the  
26 Second Amendment to the United States Constitution has not been incorporated against State  
27 action. See generally: *Nordyke v. King*, 563 F.3d 439 (9<sup>th</sup> Cir. 2009) and the order for rehearing  
28 *en banc* at *Id.*, 575 F.3d 890 (9<sup>th</sup> Cir. 2009). This issue is presently pending before the United  
States Supreme Court in *McDonald v. Chicago*, Case No. 08-1521 with a decision expected this  
Summer. This cause of action is being plead in a good faith argument for modifying or reversing  
existing law in this Circuit pursuant to Fed. R. Civ. Proc. 11(b)(2).

1                   **THIRD CLAIM FOR RELIEF: CALIFORNIA CIVIL CODE §§ 52 & 52.1**  
 2                   **PLAINTIFF HAYNIE AGAINST DEFENDANTS: CITY OF PLEASANTON,**  
 3                   **THE PLEASANTON POLICE DEPARTMENT AND DOE DEFENDANTS**  
 4                   **SECOND and FOURTH AMENDMENT, UNITED STATES CONSTITUTION**

5                   34. Paragraphs 1 through 29 are incorporated by reference as though fully set  
 6                   forth.

7                   35. Plaintiff MARK AARON HAYNIE claims damages for injuries set forth above  
 8                   under California Civil Code §§ 52 & 52.1, against Defendants CITY OF  
 9                   PLEASANTON, the PLEASANTON POLICE DEPARTMENT and the Dow  
 10                  Defendants for interference with his rights under the United States  
 11                  Constitution, including but not limited to his right to be free from  
 12                  unreasonable seizure and his right to keep and bear arms.

13                  36. Plaintiff MARK AARON HAYNIE seeks all statutory damages available,  
 14                  including any compensatory damages in an amount according to proof.

15                   **FOURTH CLAIM FOR RELIEF: 42 U.S.C. § 1983,**  
 16                   **CALIFORNIA CIVIL CODE §§ 52 & 52.1.**  
 17                   **ALL PLAINTIFFS AGAINST DEFENDANT:**  
 18                   **CALIFORNIA DEPARTMENT OF JUSTICE**  
 19                   **- PROSPECTIVE INJUNCTIVE RELIEF -**

20                  37. Paragraphs 1 through 29 are incorporated by reference as though fully set  
 21                  forth.

22                  38. Plaintiffs MARK HAYNIE, CALGUNS FOUNDATION, INC., and SECOND  
 23                  AMENDMENT FOUNDATION, INC., seek prospective injunctive relief  
 24                  against the Defendant CALIFORNIA DEPARTMENT OF JUSTICE to  
 25                  compel them to comply with their duties under California Penal Code §§  
 26                  12276.5 and 12289.

27                  39. Said injunctive relief will insure uniform and just application of California's  
 28                  Weapons Control Laws. Uniform and just enforcement of these laws are  
 29                  important because these laws regulate the fundamental Second Amendment  
 30                  right of every law abiding citizen to keep and bear arms that are in common  
 31                  use for lawful purposes.

1 40. Specifically, Plaintiffs seek an order that the Defendant CALIFORNIA  
2 DEPARTMENT OF JUSTICE be compelled to issue a letter and/or  
3 memorandum to all law enforcement agencies and District Attorney Offices  
4 that contains the information already provided to the public at this URL:  
5 <http://www.calguns.net/caawid/flowchart.pdf>

6  
7 WHEREFORE, the Plaintiffs demands a jury trial and requests that this Court:

8 A. Award compensatory damages to the Plaintiff MARK HAYNIE and  
9 CALGUNS FOUNDATION, INC., against Defendants CITY OF  
10 PLEASANTON, The PLEASANTON POLICE DEPARTMENT, and  
11 the DOE Defendants, jointly and severally, in an amount according to  
12 proof;

13 B. Award costs of this action to all the Plaintiffs;

14 C. Award reasonable attorney fees and costs to the Plaintiffs on all  
15 Claims of the complaint, including but not limited to fee/cost awards  
16 under 42 USC § 1983, 1988 and California Civil Code §§ 52, 52.1 and  
17 California Code of Civil Procedure § 1021.5;

18 D. Injunctive and declaratory relief against the Defendant CALIFORNIA  
19 DEPARTMENT OF JUSTICE to prevent future constitutional  
20 violations and miscarriages of Justice;

21 E. Such other and further relief as this Court may deem appropriate.

22 Dated: March 24, 2010,



23  
24 Donald Kilmer, Jr. [SBN: 179986]  
25 Law Offices of Donald Kilmer, APC  
1645 Willow Street, Suite 150  
26 San Jose, California 95125  
Voice: (408) 264-8489  
Fax: (408) 264-8487  
27 E-Mail: [Don@DKLawOffice.com](mailto:Don@DKLawOffice.com)

28 Attorneys for Plaintiffs